

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 14, 2017

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Cancellation of Revocable Permit No. S-7879, Savio HBH Development Company LLC, Permittee; Issuance of a Revocable Permit and Immediate Right-of-Entry to Tower Development, Inc. for Security and Property Management Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:033,034,035,045.

REQUEST:

Cancellation of Revocable Permit No. S-7879 effective July 15, 2017.
Issuance of a revocable permit and immediate right-of-entry to Tower Development, Inc. for security and property management purposes.

LEGAL REFERENCE:

Sections 171-13 and -55 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:033,034,035,045, as shown on the attached map labeled Exhibit A.

AREA:

79,583 square feet, or 1.83 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: V – Resort – Hotel uses

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Currently encumbered under Revocable Permit No. S-7879, Savio HBH Development Company, LLC, for resort-hotel purposes.

REVOCABLE PERMIT AND RIGHT-OF-ENTRY CHARACTER OF USE:

Security and property management purposes. The property shall not be used for hotel-resort or lodging purposes. No public access shall be permitted to the structures on the property, with the exception of the convenience store adjacent to Banyan Drive if the violations cited by the County of Hawaii, Department of Public Works (DPW) in its Notice of Violation dated June 22, 2017 are addressed to DPW's written satisfaction and occupancy is authorized by DPW in writing.

COMMENCEMENT DATE:

Effective date of July 15, 2017. Billing period shall be the first day of the month.

REVOCABLE PERMIT AND RIGHT-OF-ENTRY MONTHLY RENTAL:

\$2,984.00 per month. Continuation of previous permit rent for land only. Tower Development, Inc. (Tower or Applicant) shall receive a rent credit for actual material costs and labor incurred in constructing a perimeter security fence or mural around the property. Tower shall submit statements of its actual material costs and labor incurred on a monthly basis on the first of each month beginning August 1, 2017.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 51, and Class No. 3, Item No. 9, as stated in the Exemption Notification attached as Exhibit B.

REMARKS:

Background:

The subject property was previously encumbered under General Lease Nos. 3265, 3266, 3267 and GL S-4252 issued through mesne assignments to William Kimi, dba Uncle Billy's Hilo Bay Hotel. The hotel was operated as a sole proprietorship until October 1967 when Mr. Kimi incorporated the business as Hilo Bay Hotel, Inc. As a result of this action, the Board of Land and Natural Resources (Board), at its meeting of June 27, 1969 (supplemental agenda), consented to the assignment of lease from William J. Kimi, Jr., as Assignor, to Hilo Bay Hotel, Inc., as Assignee. The cumulative leases were set to expire on March 14, 2015.

At its meeting of February 27, 2015, item D-3, the Board authorized a one-year holdover of the four leases to be immediately followed by the issuance of a month-to-month revocable permit.

At its meeting of February 12, 2016 under agenda item D-3, the Board consented to the assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc., Assignor, to Savio HBH Development Company, LLC (Savio), Assignee, and approved the issuance of a single month-to-month revocable permit to (RP S-7879) Savio upon the expiration of the leases.

The revocable permit was intended as an interim measure to keep the hotel in operation until such time that the Banyan Drive Hawaii Redevelopment Agency (BDHRA), organized under the supervision of the County of Hawaii, Planning Department, develops a long-term conceptual plan for the future of the Banyan Drive resort area.¹

At its meeting of June 9, 2017, under agenda Item D-5, as amended, the Board approved the after-the-fact renewal of RP S-7879 to Savio from March 14, 2017 to June 9, 2017, at the then current ground rent of \$2,984.00 per month. During discussions regarding the condition of the property, the Board determined that the hotel should cease operation sooner than later. With that in mind, the Board approved an extension of RP S-7879 from June 10, 2017 to the close of business on July 14, 2017, at no cost. This would allow the Permittee, Savio, a reasonable amount of time to close the hotel, lay-off staff, remove personal property from the premises, and to perform all other actions necessary to shut down the operations of the hotel. The Board further specified that in the event the County inspectors provide notice to the Department of an urgent health and safety concern or violation at the hotel, then the Chairperson would be authorized to immediately shut down the hotel.

¹ The BDHRA approved a conceptual plan at its meeting in November, 2016. However, the plan has not been presented to the Planning Commission or the County Council for confirmation.

Property:

The Department obtained the services of Erskine Architects, Inc. to conduct a detailed analysis of the property to determine whether to demolish or rehabilitate the existing structures on the property. In the course of this analysis, Erskine Architects identified a number of life and safety issues at the property including unsafe stairwells, fire safety issues and advanced termite damage throughout the common areas and much of the lodging areas. Based on the Erskine Report, the hotel improvements cannot be refurbished and should eventually be torn down.

The County of Hawaii Planning Department expressed several concerns regarding the “numerous life safety issues” raised in the Erskine Report. This resulted in the County conducting an inspection of the property by the Department of Public Works and their Electrical, Plumbing and Building Divisions. In addition, the Fire Department also conducted an investigation based on information provided in the Erskine Report.

As a result of these inspections by the various County agencies, Mayor Harry Kim wrote a letter to the Chairperson dated June 16, 2017 (Exhibit C), with the recommendation that the hotel should be vacated immediately.² Upon receipt of the letter from the mayor, the Chairperson directed the immediate closure of the hotel. Land Division staff contacted Savio and measures were taken to relocate the guests then occupying the hotel rooms. Hotel services were effectively ended on June 19, 2017.

Land Division has also contracted the services of R.M. Towill Corporation to provide an assessment for the demolition of the Pagoda Hilo Bay Hotel. This assessment will provide an estimate on the permitting costs and demolition costs.

Revocable Permit:

During the June 9, 2017 Board meeting, testimony was given by Ed Bushor, a principal of both Tower and WHR LLC, lessee of the adjacent Naniloa Hotel, regarding Hilo Bay Hotel property. Mr. Bushor expressed an interest in obtaining a month-to-month revocable permit for the property at the current ground rent of \$2,984.00.³ Mr. Bushor’s interest is with regards to the security of the area. It is his intention to construct a mural/wall/fence as a means of enclosing the property with an appealing, aesthetic barrier and provide around-the-clock security. Mr. Bushor has also expressed an interest in utilizing the convenience store/gift shop attached to the hotel.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

² A formal Notice of Violation was sent via Certified Mail dated 6/22/17 to Permittee and the Hawaii District Land Office.

³ An application was received for a revocable permit under the business entity Tower Development, Inc. Mr. Bushor indicated that he would construct the fence at his own cost with credit applied to the monthly rental.

The following agencies were consulted regarding this matter with the results indicated:

Agency:	Comment:
Office of Conservation and Coastal Lands	
Historic Preservation	
Engineering	
Office of Hawaiian Affairs	
County Planning Department	
County Department of Public Works	
Water Board of the County of Hawaii	
County Fire Department	

Subject to the Applicant meeting all the above conditions, staff is recommending that the Board authorize the cancellation of Revocable Permit No. S-7879 to Savio and approve the issuance of a month-to-month revocable permit and immediate right-of-entry for security and property management purposes to Tower. A right-of-entry permit can be prepared and executed much faster than a revocable permit, and staff is therefore recommending that an immediate right-of-entry permit be issued as an interim measure in this case. Both the revocable permit and right-of-entry will specify that: (1) the property shall not be used for hotel-resort or lodging purposes; and (2) no public access shall be permitted to the structures on the property, with the exception of the convenience store adjacent to Banyan Drive if the violations cited by the DPW in its Notice of Violation dated June 22, 2017 are addressed to DPW's satisfaction and occupancy is authorized by DPW in writing.

Issuing the revocable permit and right-of-entry to Tower for security and property management purposes is in the State's best interest because Tower will be incurring costs that the State would otherwise have to incur to secure the property. Tower will not be able to make productive use of the closed portions of the property. Accordingly, staff is including a recommendation below that the Tower receive a rent credit for actual material costs and labor incurred in constructing a perimeter security fence or mural around the property. Staff is further recommending that Tower submit statements of its actual material costs and labor incurred on a monthly basis on the first of each month beginning August 1, 2017.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the cancellation of Revocable Permit No. S-7879 to Savio HBH Development Company, Inc. in the manner specified by law.

3. Authorize the issuance of a revocable permit to Tower Development, Inc., covering the subject area for security and property management purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time, provided that (1) the property shall not be used for hotel-resort or lodging purposes; and (2) no public access shall be permitted to the structures on the property, with the exception of the convenience store adjacent to Banyan Drive if the violations cited by the County of Hawaii, Department of Public Works (DPW) in its Notice of Violation dated June 22, 2017 are addressed to DPW's satisfaction and occupancy is authorized by DPW in writing;
 - b. Monthly rental shall be set at \$2,984.00 per month, being a continuation of previous revocable permit ground rent. Applicant shall receive a rent credit for actual material costs and labor incurred in constructing a perimeter security fence or mural around the property. Applicant shall submit statements of its actual material costs and labor incurred to the Department on a monthly basis on the first of each month beginning August 1, 2017;
 - c. Applicant acknowledges that life and safety issues relating to the improvements on the property have been identified in a DPW Notice of Violation dated March 10, 2014 relating the closed restaurant on the property, the report of Erskine Architects, Inc. dated June 29, 2016, the County of Hawaii Fire Department inspection report dated June 13, 2017, and the DPW Notice of Violation dated June 22, 2017. Applicant accepts the property and improvements thereon in "as is, where is" condition with all faults and defects, whether latent or patent. The State does not warrant the condition of the land or improvements or that they are fit for Applicant's intended purpose;
 - d. Review and approval by the Department of the Attorney General; and
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate management right-of-entry permit to Tower Development, Inc. for security and property management purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry form, as

may be amended from time to time; provided that provided that: (1) the property shall not be used for hotel-resort or lodging purposes; and (2) no public access shall be permitted to the structures on the property, with the exception of the convenience store adjacent to Banyan Drive if the violations cited by the County of Hawaii, Department of Public Works in its Notice of Violation dated June 22, 2017 are addressed to DPW's satisfaction and occupancy is authorized by DPW in writing;

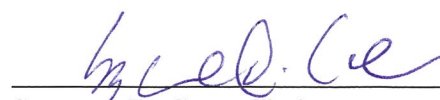
- b. The right-of-entry permit shall terminate upon issuance of the revocable permit provided for above;
- c. Monthly rental shall be set at \$2,984.00 per month. Applicant shall receive a rent credit for actual material costs and labor incurred in constructing a perimeter security fence or mural around the property. Applicant shall submit statements of its actual material costs and labor incurred to the Department on a monthly basis on the first of each month beginning August 1, 2017;
- d. Applicant acknowledges that life and safety issues relating to the improvements on the property have been identified in a DPW Notice of Violation dated March 10, 2014 relating the closed restaurant on the property, the report of Erskine Architects, Inc. dated June 29, 2016, the County of Hawaii Fire Department inspection report dated June 13, 2017, and the DPW Notice of Violation dated June 22, 2017. Applicant accepts the property and improvements thereon in "as is, where is" condition with all faults and defects, whether latent or patent. The State does not warrant the condition of the land or improvements or that they are fit for Applicant's intended purpose; and
- e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State

Respectfully Submitted,



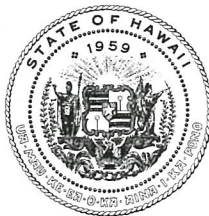
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 24, 2017

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Revocable Permit for and Immediate Right-of-entry Security and Property Management Purposes.

Project / Reference No.: PSF 17HD-079

Project Location: Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:033,034,035,045,

Chap. 343 Trigger(s): Use of State Land

Authorization: The Board, at its meeting of September 25, 2015, under agenda item D-17, delegated authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 51 that state "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing", respectively. Class No. 3, Item No. 9 that states "Construction of security features, including fencing, gates, cameras, lighting, and other similar items".

EXHIBIT B

Project Description:

The subject property was previously encumbered under General Lease Nos. 3265, 3266, 3267 and GL S-4252 issued through mesne assignments to William Kimi, dba Uncle Billy's Hilo Bay Hotel. Prior to the expiration of these leases, the Board consented to an assignment of the leases to Savio HBH Development Company, LLC (Savio) and subsequently, approved a month-to-month revocable permit (RP S-7879) to Savio.

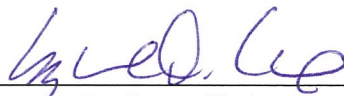
Staff is recommending the cancellation of Revocable Permit No. S-7879 to Savio HBH Development Company, Inc. and the issuance of a revocable permit and immediate right-of-entry to Tower Development, Inc. for security and property management purposes.

Consulted Parties

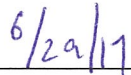
Agencies listed in the submittal.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson



Date



EXHIBIT C

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossov
Deputy Managing Director

County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokalole Hwy. Bldg. C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

June 16, 2017

Ms. Suzanne Case, Chairperson

Sent via e-mail only

Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Ms. Case,

RE: **Uncle Billy's Hotel**
87 Banyan Drive, Hilo, HI

A meeting was held today with the inspectors and division heads of the Fire Department and the Department of Public Works. After discussion of their formal inspections of the Uncle Billy's Hotel, it has been agreed by all parties that the premises of Uncle Billy's Hotel should be vacated *immediately*.

The reports from the Fire Department and from the Department of Public Works, Electrical Division are attached. This information is being sent to you because of the urgency expressed by the inspectors that the safety concern mandates this be done.

The final reports from the Department of Public Works including the Plumbing and Building Divisions will be submitted to you on Monday.

Thank you so very much for your work.

Aloha,

A handwritten signature in black ink that reads "Harry Kim".

Harry Kim
Mayor

Attach